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Transcriber's Office

Revenue Committee
January 22, 2010

[LB823 CONFIRMATION]

The Committee on Revenue met at 1:30 p.m. on Friday, January 22, 2010, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB823 and gubernatorial appointments. Senators present: Abbie Cornett, Chairperson; LeRoy Louden; Pete Pirsch; Dennis Utter; and Tom White. Senators absent: Merton "Cap" Dierks, Vice Chairperson; Greg Adams; and Galen Hadley.

SENATOR CORNETT: Good afternoon and welcome to the Revenue Committee. I am Senator Abbie Cornett from Bellevue. To my left is Vice Chair, Senator Dierks, from Ewing. Senator Greg Adams and Senator Hadley will not be joining us today. To my far right is Senator Pete Pirsch from Omaha. Senator Dennis Utter was here a moment ago, from Hastings. I believe we're going to be joined by Senator Louden from Ellsworth and Senator White from Omaha. Our research analysts are Steve Moore to my right and Bill Lock to my left. Erma James is committee clerk. Before we begin hearings today, I would ask everyone to please turn your cell phones to either the off or vibrate. The sign-in sheets for testifiers are on tables by both doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you need to submit a form for each bill. Please print and complete the form prior to coming up to testify. When you come up to testify, please hand your sheet to the committee clerk. There are clipboards at the back of the room to sign in if you do not wish to testify but wish to indicate either your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted at the door. The introducer or representative will present the bill, followed by proponents, opponents, and neutral. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name and spell it for the record. If you have handouts, please bring ten copies for the committee and staff. If you only have the original, we will make copies for you. Please give handouts to the pages to circulate. With that, we will begin the Revenue hearing today. The first thing on the agenda is the gubernatorial appointment of Robert Hotz to the Tax Equalization and Review Commission. Mr. Hotz.
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ROBERT HOTZ: Thank you, Senator Cornett and members of the Revenue Committee. My name is Rob Hotz, H-o-t-z, and I have been reappointed to the Tax Equalization and Review Commission, which we all fondly call TERC. Sometimes I wonder if it's because it rhymes with jerk, but (inaudible). (Laughter) I was first appointed in August of 2007. This is a reappointment, and I have served on the commission for roughly two years and four months. My first confirmation hearing my base of experience was about five months. So at this point it's a little bit more. I'm very interested in continuing to serve. I think that there are plenty of issues and cases and matters and things to be dealt with that I feel that I might be able to be helpful in that process. I would mention a couple of the things that we have done at the commission in the last year or two that I think have been improvements. One is that we have established an administrative procedure

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where we have commission hearings where two commissioners hear cases and we hear the cases in pairs, if you would--one presiding officer and one other commissioner. We have built a second hearing room up in the State Office Building where we're housed on the sixth floor. We have two hearing rooms there now and that accommodates that we are able when we need to and when we can schedule and that's our plan to do so more often--to have two-commissioner hearings on a regular basis one or two or three times per week. That's up to the chairman of the commission. The Nebraska Supreme Court just last month in a case where the taxpayer's name was Anderson, there was some challenge to whether or not the commission had a quorum at that hearing and the Court of Appeals did say that, under statute which requires a panel of three commissioners, to have two commissioners present would be a proper quorum under that statutory requirement. The upside is we can deal with our caseload and manage our caseload a lot more effectively. The downside might be that people might feel that, hey, this is a four-commissioner commission. Why aren't all four of you here? That may be a downside. There is also a possible downside that it looks like we're not doing our job. These are hearings where the chairman of the commission assigns the panel of two commissioners, and one commissioner is listed as being excused and one is listed as being absent. The court did approve of this procedure, and I just wanted the committee to be aware of that. When we travel, we no longer send four commissioners when we go out to western Nebraska. We send three. There are some efficiencies in that. Once again, there's a possible downside that people might look at that and say, why aren't all four commissioners here? You are all, you know, viewed as being...having something to bring to the table. And that's a decision that the commission administratively has made and the chairman of the commission has the authority to make those decisions and will assign which commissioners are present or assign to those panels and then we appear at those hearings. I would like to offer to the committee that I'm very interested. I don't have any interest in being defensive about the people...anyone who is critical of the commission. I've heard that there have been some criticisms, and you're all aware of probably more than I am. And I have no interest in being defensive about those things. I'm very interested in entering into the dialogue and being a part of what...I just admit I'm a sap. I'm interested in good government, and I want to participate on the commission towards that end. So I'd be happy to answer any questions you may have. [CONFIRMATION]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you. Is there anyone here that wishes to speak to the appointment? Okay. We will move on to LB823. Senator Janssen, you are recognized to open. [CONFIRMATION]

SENATOR JANSSEN: Senator Cornett, members of the Revenue Committee, for the record my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent the 15th District, and I appear in front of you to introduce LB823. LB823 would permit a county board, with the approval of the voters at a statewide general election, to appoint the county assessor. I introduced LB823 in order to give counties who may wish to appoint

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an assessor the opportunity to ask the voters for their permission to do so. Dodge County, which I represent, in addition to several others will soon be reacquiring the county assessment function from the Department of Revenue, as you know. The state employee, who may be doing a fantastic job, and is in Dodge County I might add, will be out of work and potentially could face an expensive countywide race to retain their position. LB823 would be a good opportunity for the Legislature to take the politics out of the assessment function. Too often, assessors are punished for following state law. In the interest of good policy, the Legislature has seen fit to require that property be assessed at 92 to 100 percent of market value. Voters who disagree with this policy may take it out unfairly on the assessor. It is one of the few offices where being good at your job can jeopardize your future, although I may take some counterpoints with that sometimes as well. LB823 is not a free pass for county boards. If they wish to appoint an assessor they must first ask the voters, at a statewide general election, for the permission to do so. The voters will determine if they wish to grant the authority or not to grant this authority. NACO did approach me today or actually a few days ago and they said that their board opposes LB823. In our discussions, I responded favorably to their idea that if LB823 is advanced the committee may want to add a provision to permit the counties to ask for the voters to rescind the appointment authority at a later date if they wish. I would not oppose that addition and offer any assistance to the committee and the counsel that you may need to get this possible amendment in order. I thank you for your consideration and would be happy to entertain any questions. I'm fairly certain...I'm not certain that there's anybody here to speak in favor of it. I'm fairly certain NACO is here to speak against it. So this is your chance. [LB823]

SENATOR CORNETT: Questions from the committee? Senator Utter. [LB823]

SENATOR UTTER: Senator Janssen, thank you for coming. Thank you for bringing this bill. I think this is an interesting idea. Did you give any thought to including all county offices under that same umbrella... [LB823]

SENATOR JANSSEN: You know, I...oh, sorry. Go ahead. [LB823]

SENATOR UTTER: ...as maybe an efficiency move for county government? Is that a thought at all? [LB823]

SENATOR JANSSEN: You know, I really didn't and that's an idea but, as you're aware of, there are some county positions right now that are appointed. In Dodge County, the...you know, the roads supervisor is appointed and noxious weed is appointed and so in some counties they're elected. You know, I'm certainly not against having the people vote for stuff and that's why I wanted to have it up to the voters to say, you know, we voted for the supervisors, we put them in office, we trust their decision to appoint the county attorney or the county assessor in this case. And in the case of Dodge County and other counties that will be taking on this function again on a countywide level

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instead of a state level, currently that person is appointed by the state so it would be a little bit different. They now would be appointed by the supervisors at the leisure of the supervisors. Being on the Fremont City Council, I watched our mayor appoint department of utilities directors and chief of police and whatnot, so I'm making it similar to that. [LB823]

SENATOR CORNETT: Senator Janssen, I just...I have to say I have some concerns about the idea because the county assessor assesses the property. If that assessment is contested, it goes to the county board, so it's basically going to the people that have hired the assessor. Do you see that there could be a conflict or that that...I mean it's not like appointing the county attorney because if a case is appealed with the county attorney it isn't appealed to the county board. [LB823]

SENATOR JANSSEN: Is that your concern? [LB823]

SENATOR CORNETT: Yeah. I mean, do you see a problem there? [LB823]

SENATOR JANSSEN: I don't...I see what you're saying. There may be other appointed positions. You know, I use roads for instance. That comes up quite a bit. A person comes up back with a complaint and it goes to the supervisors and they're asked to be put at odds with the person that they've appointed to have that position, so that's certainly not a position that the supervisors are unfamiliar with being in, and not all the time is every supervisor, you know, agreeable with, you know, the actions of somebody that they appoint. [LB823]

SENATOR CORNETT: Senator Louden. [LB823]

SENATOR LOUDEN: Yes. Thank you, Senator Cornett. Senator Janssen, I guess I need a little help with this here. Now is this for temporary appointments until the next election or is this if they're appointed they're the person for how long, is it for however long the term usually was, four years or what's the plan here? [LB823]

SENATOR JANSSEN: The plan would be they'd be appointed at the leisure of the supervisors and that would be, in my estimate, I'd check, I'll check on this for you, but my understanding is much like the mayor in a city. Every year they reappoint this position. [LB823]

SENATOR LOUDEN: Then, other words, they would serve at the discretion of the county board. [LB823]

SENATOR JANSSEN: Correct. [LB823]

SENATOR LOUDEN: Okay. And that would be...right now you just have the assessors

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doing that. [LB823]

SENATOR JANSSEN: Right now it's on the statewide level. We're still on that. Senator Wightman ran a bill last year and we're phasing that out right now. When we talked about phasing it out, I approached him with this idea and he said he certainly would not oppose that, and that was last year in a meeting with him. He may have changed course on that. He hadn't last time I talked to him so I...but I hate to put words into his mouth. [LB823]

SENATOR LOUDEN: Then, as Senator Utter mentioned using other offices, then actually if that was the case, it went down the path that Senator Utter is pointing, then the county board would be the ones that would choose the whole county government. Is that correct? [LB823]

SENATOR JANSSEN: If Senator Utter wanted to run a bill that said that, that would be correct. [LB823]

SENATOR LOUDEN: But that's what I mean. This is what you're talking about. You could even go as far as the sheriff or anybody else. Everybody would be serving at the discretion of the county board, because that's what this bill does. [LB823]

SENATOR JANSSEN: Well, this bill doesn't actually do this. This bill authorizes the supervisors to seek a vote to do that. It still takes the people voting. The people have to vote away their opportunity to vote for this position. [LB823]

SENATOR LOUDEN: Yeah, but once they vote then that's it, is that right? They don't get to vote every so often if they want to change their mind. Once they vote, they either vote to do it or they don't do it from then on. Is that correct? [LB823]

SENATOR JANSSEN: As written, what you're saying is correct. But, like I said, with...and I talked to the NACO representatives, I would be very favorable to an amendment that says we could also reverse it with a vote of the people. [LB823]

SENATOR LOUDEN: I see. Okay. Thank you. [LB823]

SENATOR CORNETT: Further questions from the committee? Senator Utter. [LB823]

SENATOR UTTER: Just to clarify it, though, your bill just covers the county assessors. [LB823]

SENATOR JANSSEN: Correct. [LB823]

SENATOR UTTER: My question that asked you whether you had considered the rest of

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the elective offices other... [LB823]

SENATOR JANSSEN: Right, and I had not, but certainly that was...I did question the authority...questioned the authority of the supervisors that allowed them to appoint whether it be noxious weed or whatnot or, as Senator Loudon said, the sheriff, which I doubt would ever happen but...the potential for that. And on the citywide level, you know, the city of Fremont, they do appoint the chief of police, so possibly they could appoint a sheriff someday. But that's not what this bill does. [LB823]

SENATOR UTTER: I guess on a...in a...I've somewhat wondered, you know, whether there were efficiencies to be gained or not, say, if a county board of supervisors was responsible for hiring a county administrator and then he would be the individual that would staff the necessary offices of the county. And I'm not sure whether there's efficiencies to be gained there or not, but it is something to...that has to enter your mind. [LB823]

SENATOR JANSSEN: I certainly think there would be efficiencies to a continuity of office. If the person is not doing their job or, you know, the people are getting upset with it, that's going to fall on the supervisors and the supervisors are going to be forced to take action on it, just like we were as city council members in Fremont if people were upset with the chief of police, if people were upset with the roads director and whatnot. And, you know, by keeping people in office and not having them subjected to a four-year turnover, yeah, I think there would be some efficiencies actually. [LB823]

SENATOR CORNETT: Senator Pirsch. [LB823]

SENATOR PIRSCH: Is the underlying...was the major reason to bring this forward is you fear that...for that particular position? You know, the assessor, one who sets the value of property and, therefore, has the potential of costing, you know, individual taxpayers more money, depending upon the level he sets them at, is it because that person has to run for election and, therefore, has a, you know, inherent, you know I guess, desire to be popular? I mean is that the reason why you fear and you want to insulate that...the person making that call from... [LB823]

SENATOR JANSSEN: That is part of the reason, Senator Pirsch. Thanks for the question. I think any time you're assessing property and it's done on a popular vote type thing, well, that's not a popular job. We can argue that none of our jobs are real popular but when you're directly reaching into the pockets in this capacity, assessing somebody's homestead and their property, you know, I guess the urge to be popular could come into play certainly. [LB823]

SENATOR PIRSCH: But is that the major reason that you're bringing this forward, is the (inaudible)? [LB823]

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SENATOR JANSSEN: The major reason I brought it is...I'm sorry? [LB823]

SENATOR PIRSCH: You want it to be...you want that...the person making that call to be insulated. Is that the major reason behind this? [LB823]

SENATOR JANSSEN: I brought this in response to Senator Wightman's bill where we already had an appointed official doing the job and doing the job efficiently. In my county, and you'd have to talk to the affected senators, I believe there's 11 from across the state that were affected by Senator Wightman's bill that also basically had a person in position doing it and has been doing it. I don't know if they've been doing a good job or a bad job. But again, it still takes a vote of the people to allow this to happen. [LB823]

SENATOR PIRSCH: But your bill would reach far beyond the 11 jurisdictions that are going through this change, right, and affect all 93 counties? [LB823]

SENATOR JANSSEN: If they want it to. If they want to. My county supervisors, the two that I approached, and there's eight of them I believe, no, there might be seven, they...two of them were favorable of that idea. They think the assessor that's appointed by the state is doing a wonderful job right now. They'd be in favor of that. They would probably put it toward an election. That doesn't mean Douglas County would have to do that. That doesn't mean Sarpy County, etcetera, would have to do that. [LB823]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB823]

SENATOR JANSSEN: Thank you. [LB823]

SENATOR CORNETT: First proponent. Are there any proponents? We'll move to opposition testimony. First opponent. [LB823]

MIKE GOODWILLIE: Good morning, Senator Cornett, members of the committee. My name is Mike, M-i-k-e, Goodwillie, G-o-o-d-w-i-l-l-i-e. I represent the Douglas County Assessor's Office and speak in opposition to LB823. Let me start with a disclaimer and that is that nothing I say here today is meant to cast any aspersions, either expressed or implied, on the ethics or professionalism of the Douglas County Board of Equalization. I've got some smiles, not...it's not as big a kill line as I thought it would be. (Laughter) But the reason I offer that disclaimer is sort of the heart of what I think is the problem with this bill and that is you already have assessors for whom the county board controls the budget and now I think if you say, all right, they're going to control your tenure as well, you've made the process a heck of a lot more political when you have to please four out of seven board members than if you have to please at least a majority of the voters who vote. And I could easily...I'm going to take Senator Janssen at his word that

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that appointment would be at the pleasure or leisure of the county supervisors so if I, as the assessor, have a disagreement one day with the county board about an exemption or I go ahead and reappraise a neighborhood with a number of well-connected individuals who donate to political campaigns, can they fire me that morning? If that's...if I serve at the will of the county board, I think they probably can. And so I think you're going to make the process a lot more political rather than less. Actually, my remarks here today are more based on feedback that we would get from assessors when I worked for the Department of Property Assessment and Taxation, and I think the concerns were always that, you know, county boards tended to want to meddle a bit in the appraisal or assessment process for certain neighborhoods. It was unpopular to reappraise certain neighborhoods. I suppose to some degree, at least during the county board process, it's sort of the flip side of having elected county board members. But that said, it probably shouldn't reach into the appointment and valuation process, and I think most assessors would rather take their chances with the voters of their county than they would with four county...with four county board members. And I think that will conclude my remarks and will entertain any questions that you might happen to have. [LB823]

SENATOR CORNETT: Questions from the committee? Thank you, Mr. Goodwillie. [LB823]

MIKE GOODWILLIE: Thank you very much. [LB823]

SENATOR CORNETT: Next opponent. [LB823]

JON EDWARDS: (Exhibit 1) Could I have this distributed and entered into the record? Good afternoon, Senator Cornett, members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm representing Nebraska Association of County Officials. Also want entered into the record a letter being distributed from Marilyn Hladky, who is the president of the Assessors Association and also sits on the NACO board in opposition to this bill. She was going to be here today to testify but became ill last night so she couldn't make it in. She apologizes for that. Essentially, you know, we want to thank Senator Janssen for including us in the discussion of this in his offer of including the technical...talking about the technical concerns we have about the ability for a county to get back out of it if they would have happened to get into it. But aside from that, I guess we're really kind of left with the policy arguments, and I think Mr. Goodwillie really kind of pretty much touched on those. And a lot of your questions earlier for Senator Janssen seemed to touch on those as well fairly effectively, and also kind of reminds me of the discussion that we were having yesterday and certainly dealing with the exemptions and the strong arm that the board might apply to an assessor dealing with just simply an exemption or something like that, if you have an assessor connected to the board controlling their appointment or their dismissal. It seems like you create some real problems, political and otherwise, when you have a system such as this. It just seems to be very problematic. We also, you know, we just started into this process of reassuming

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all the assessors statewide so that everybody will have an elected assessor. We think there's not only the issues we had raised when that bill was going forward but we think that it provides some statewide consistency. And if we go back in and start to tinker with this again, we're going to kind of lose that consistency, we will, if counties were to choose to vote this in, and we think there's some value to that consistency. So I won't take any unnecessary time. Those are our general concerns about the bill and we are in opposition to it. And thank you for your time. [LB823]

SENATOR CORNETT: Thank you. Questions from the committee? Seeing none, thank you. Next opponent? Are there any further opponents? Is there anyone here to testify in the neutral capacity? Senator Janssen, you are recognized to close. [LB823]

SENATOR JANSSEN: Thank you, Senator Cornett. I'll be brief. I appreciate NACO and Mr. Goodwillie coming here today to testify, even though in opposition, because I wanted to start this discussion. I still...and I certainly want to push forward with this bill. I think it makes sense to do it this way. I don't buy the arguments that were given there. I respectfully disagree with Mr. Goodwillie that he, in his opinion, he thinks most county assessors would prefer to get elected. I didn't run a straw poll on that either. I know there's one that would prefer it that way that's been here today. We're asking these counties to change, specifically my county and other counties, to change the way they've been doing business for a number of time in the state. This was pulled out from under them, and now they're asking still for a vote of the people, all counties can do this, a vote of the people to decide whether or not they're going to allow their elected officials, their supervisors to appoint this position. The arguments that I heard, really I just don't think they hold up to muster. All...in the questions I took, I just don't think they hold up. Reporting back to the supervisors, that happens every day. It happens in multiple departments. It happens citywide all the time where the people that appoint people are put at opposition with them all the time. Happens in roads departments all the time right now with all the snow removal. I've seen it before. So I think this is a worthwhile idea. It changes really nothing other than it gives the voters the opportunity to make a decision, if in my opinion, make government a little more efficient. And with that, I'll just close. Thank you. [LB823]

SENATOR CORNETT: Thank you. That ends the hearings for today. Thank you, everyone. [LB823]